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IN THE

Supreme Court of the United States

October Term, 1965

No. 886

WILLIAM C. BARNES,

Petitioner

vs.

REDERI A/B FREDRIKA, Defendant and Third-Party Plaintiff, and ATLANTIC & GULF STEVEDORES, INC. Third-Party Defendant

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, Rederi A/B Fredrika, respectfully opposes the issuance of a Writ of Certiorari to review the final judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled matter on September 9, 1965.

The Opinions of the Courts Below and the Jurisdictional Requisites are correctly and adequately set forth in the Petition. However, Respondent disagrees with the statement of the Question Presented as expressed in the Petition. The issue considered and resolved against Petitioner by both the District Court and the Court of Appeals is more accurately stated as follows:

QUESTION PRESENTED

Does The Warranty Of Seaworthiness Owed A Longshoreman Extend To Those Parts Of The Ship Which Are Not Connected Or Related To His Work And To Which He May Not Reasonably Be Expeted To Go?

STATEMENT OF THE CASE

The factual evidence on which the trial jury found against Petitioner is concisely and accurately summarized in the Circuit Court's unanimous opinion as follows:

> "Employed by a stevedore in the discharge of general cargo from the DOROTEA, while docked in Hampton Roads, Virginia, William C. Barnes was working with others at No. 4 hold. Near the end of the day certain bales of wool were discovered to have been unloaded through mistake. Barnes' gang was ordered to reload them upon the 'tween deck, just forward of No. 4 hold.
>
> The hatch of No. 5 hold, immediately aft of No. 4, had been closed at the weather deck. There was no bulkhead or other fixed separation of the two holds at

the 'tween level. In lieu, cargo had been piled athwartships between them to a height of 4 or 5 feet ,for about 6 feet in thickness. This wall of cargo extended, at each end, to within 2 or 3 feet of the ship's hull. Between the cargo-wall and the coaming around the squares of the holds, there was approximately 3 feet for passage.

Barnes had not worked in the No. 5 area that day, and the re-stowing required neither access to nor any use of it whatsoever. A few minutes before Barnes' ill-fortune, pier superintendent Riley had gone part way down the 'tween deck ladder, on the fore side of No. 5, while looking for a reportedly missing stowage of canned beef. He found it stacked in the No. 5 'tween deck side of the cargo-wall near the ladder. None of it had been disturbed. The hold was dark and unlighted. It was covered at the 'tween deck with hatch boards, several of which had been set aside at the ladder and an opening into the lower hold thus created. Barnes was then engaged forward of No. 4 on the 'tween deck.

After the search Riley left the area. Very shortly, upon hearing the report of a fall in No. 5, he went to the weather deck where rescuers had opened No. 5 hatch. He could see Barnes lying at the foot of the ladder in the lower part of the hold. Cartons of the canned meat on the 'tween deck had been broken open, with several cans spread about on the deck. The ladder and point of the missing boards in No. 5 were approximately 40 feet from where Barnes and his companions had been working."

The District Court charged the jury that if the conditions in the No. 5 'tween deck were unsafe, then the ship

was unseaworthy and if Barnes was injured as a proximate result thereof *at a place where he could reasonably be expected to go,* then the shipowner would be liable. The Trial Court further charged that the shipowner's duty to furnish the longshoreman a reasonably safe place to work, *is confined to those parts of the ship to which the longshoreman may reasonably be expected to go.*

The jury's verdict was in favor of the shipowner.

REASONS WHY A WRIT SHOULD BE DENIED

I. The Jury's Factual Determinations Were Uncontested In The Court Of Appeals And Should Not Be Ignored Or Reversed By This Court.

By its verdict adverse to Barnes, the jury concluded that the longshoreman was injured in an area ('tween deck, No. 5 hatch) that was not connected or related to his work of discharging and re-stowing cargo in the 'tween deck area forward of the No. 4 hatch. The jury further concluded that the No. 5 'tween deck was an area to which the shipowner could not reasonably have expected the longshoreman to go. These factual conclusions were not contested in the Court of Appeals. Unless this Court is to ignore or to reverse these factual determinations of both lower Courts, the Petition must be denied. Otherwise, the purpose of a claimant's actual activities at the time of his accident and the scope of his employment while he is temporarily performing an isolated part of the ship's work are irrelevant to the proximate cause of his injury.

An appellate court does not substitute its own conclusions for those of the trial jury, (*Tennant v Peoria & P. U. R. R. Co.* 351 U.S. 29, 64 S. Ct. 409, 88 L. Ed. 520 (1944);

Ferguson v Moore-McCormack Lines, Inc., 352 U.S. 521, 77 S. Ct. 457, 1 L. Ed. 2d.. 511 (1957), nor does certiorari issue when it is unnecessary to determine if the jury's function in passing on disputed questions of fact and in drawing inferences from proven facts has been respected. (*Wilkerson v McCarthy et al, Trustees*, 336 U.S. 53, 69 S. Ct . 413, 93 L. Ed. 497 (1949).

The evidence as to (1) the type work Barnes was supposed to be doing (2) the place Barnes was supposed to be working with the other longshoremen, and (3) the place where Barnes was actually injured, was undisputed and the jury's function in drawing inferences therefrom has been respected in both the District Court and the Court of Appeals. Thus, the Petition should be denied.

II. The Fourth Circuit's Decision Is In Accord With Principles Established By This Court And With The Second Circuit's Decision In *Calderola v Cunard S. S. Co.*, 279 F. 2d. 475 (1960), cert. den. 364 U.S. 884, 81 S. Ct. 172, 5 L. Ed. 2d. 104.

The longshoreman's right to the warranty of seaworthiness arises from the fact that he "is, in short, a seaman because he is doing a seaman's work and incurring a seaman's hazards." *Seas Shipping Co. v. Sieracki*, (1946) 328 U.S. 85, 66 S. Ct. 872. In establishing this right in *Sieracki*, this Court rejected the argument that the longshoreman falls under the warranty because of his contract of employment. The right of the longshoreman to the warranty, like the right of the seaman, turns rather upon the worker's status of being in the ship's service than on any common law concept of employer-employee relationship. Throughout the majority opinion in *Sieracki* there is a continuing stress on the "service" and "work" performed as giving rise

to the protection. Nowhere does *Sieracki* state or imply that the warranty should extend to a longshoreman who is *not* performing the services for which he was employed and strayed to a point *wholly* and *completely* unrelated to his work area.

In speaking for a unanimous court below, Judge Albert V. Bryan, said:

(350 F. 2d. 865, 866):

> "No mistake is perceived in the Court's submission of the issue of unseaworthiness. *Confining the duty of maintaining a seaworthy vessel to the reasonable scope of the longshoreman's activity is logical and correct in principle. Fully acknowledged as an obligee of the ship's duty, nevertheless the longshoreman's due should not exceed the need for his protection as measured by his function on the vessel.* He is not subject to momentary orders, as is a crewman, to any part of the vessel whatsoever, and his presence at a location unconnected with his task is not to be anticipated."

The Fourth Circuit is in accord with the Second Circuit's decision in *Calderola v Cunard S. S. Co.*, 279 F. 2d. 475 (1960) cert. den. 364 U.S. 884, 81 S. Ct. 172, 5 L. Ed. 2d. 104, wherein the Second Circuit said:

279 F. 2d. 475 at 477:

> "A shipowner's duty to provide stevedores with a reasonably safe place to work is 'confined to those parts of the ship to which the (stevedore) . . . may reasonably be expected to go . . .'"

Therefore, the District Court's jury charge, approved and affirmed by a unanimous Fourth Circuit, is in accord with guiding principles established by this Court and existing precedent established in the Second Circuit.

CONCLUSION

The Question Presented on this application for certiorari has been answered by both the Second Circuit and the Fourth Circuit which are in accord. The grant of a writ herein will require this Court either to ignore the trial jury's determination of fact or to substitute its own conclusions in place thereof. Accordingly, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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